

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

Gail Marie Heurung,

Plaintiff,

v.

Comenity Bank,

Defendant.

Case No. 3:21-cv-00376-jdp

**NOTICE OF VOLUNTARY DISMISSAL PURSUANT
FED.R.CIV.P. 41(a)(1)(A)(i) AND REQUEST FOR ENTRY OF DISMISSAL ORDER**

TO THE HONORABLE COURT:

NOW COMES, Plaintiff, Gail Marie Heurung, through her undersigned attorney, and respectfully states and prays:

1. On June 4, 2021, Plaintiff filed the complaint of caption. See ECF entry No. 1. On August 17, 2021, Defendant filed a motion for a second extension to plead in response. (ECF No. 7).

2. Federal Rule of Civil Procedure 41 provides, in its relevant part:

(a) Voluntary Dismissal.

(1) *By the Plaintiff.*

(A) *Without a Court Order.* Subject to Rules 23(e), 23.1(c), 23.2, and 66 and any applicable federal statute, the plaintiff may dismiss an action without a court order by filing:

(i) **a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or**

(ii) a stipulation of dismissal signed by all parties who have appeared.

1 (B) *Effect*. Unless the notice or stipulation states otherwise, the dismissal is
2 without prejudice. But if the plaintiff previously dismissed any federal-or state-
3 court action based on or including the same claim, a notice of dismissal operates as
4 an adjudication on the merits.”

5 Fed.R.Civ.P. 41, 28 U.S.C.A. (emphasis added).

6 3. The complaint has not been answered by the defendants, even though counsel
7 appeared and requested an extension to plead in response.

8 4. Pursuant to Fed.R.Civ.P. 41(a)(1)(A)(i), Plaintiff respectfully notifies the
9 voluntary dismissal of the Complaint, with prejudice.

10 **WHEREFORE**, Plaintiff respectfully requests this Honorable Court to GRANT the
11 instant request for voluntary dismissal of the Complaint with prejudice.

12
13 RESPECTFULLY SUBMITTED, on this 16th day of September, 2021.

14
15 /s/ Carlos C. Alsina-Batista

16 Carlos C. Alsina-Batista (State Bar No. 327286)

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23 *Attorneys for Plaintiff, Gail M. Heurung*

24
25 **CERTIFICATE OF SERVICE**

26 I hereby certify that on September 16, 2021, I electronically filed the foregoing document
27 with the Clerk of the Court through the CM/ECF system, which will send notification of such
28 filing to all attorneys of record.

29
30 /s/ Carlos C. Alsina-Batista

31 Carlos C. Alsina-Batista

32 *Attorney for Plaintiff, Gail M. Heurung*